

Message Text

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ACTION EB-04

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TO SECSTATE WASH DC IMMEDIATE 5496

INFO AMEMBASSY BONN

C O N F I D E N T I A L SECTION 01 OF 02 OECD PARIS 04186

LIMDIS GREENBACK

PASS TREASURY FOR COOPER FROM BRADFIELD

E.O.11652: GDS

TAGS: EFIN, OECD

SUBJECT: GERMAN CLAUSE

1. IN YOUR FURTHER CONSIDERATION OF THE U.S. POSITION ON THE SO-CALLED "GERMAN CLAUSE," YOU WILL BE INTERESTED IN HOW THE LEGAL TEXT RENDERS THE PROVISIONS OF THE OUTLINE. MARRIS SUPPORTS THIS VERSION, ALTHOUGH IT MAY DEPART SOMEWHAT FROM THE LETTER, BUT NOT THE SPIRIT, OF THE OUTLINE. PLEASE NOTE THAT IT TAKES A TWO-THIRDS MAJORITY TO EXCUSE A MEMBER FROM USE OF ITS GUARANTEE AND THAT THE GERMAN CLAUSE HAS NOT BEEN INCORPORATED IN THE OPTING-OUT PROVISION OF ARTICLE 6 ON DECISION-MAKING.

BEGIN TEXT

ARTICLE VIII

DIRECT LENDING AND GUARANTEE FINANCING

SECTION 1. FINANCING OBLIGATIONS:

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IF THE FUND MAKES A CALL FOR DIRECT LENDING OR

GUARANTEE FINANCING, PURSUANT TO A DECISION UNDER ARTICLE VI, A MEMBER SHALL DISCHARGE ITS OBLIGATIONS TO PROVIDE SUCH FINANCING, IN AN AMOUNT EQUAL TO THE CALL ON THAT MEMBER, BY:

- (A) TRANSFERRING CURRENCY TO THE FUND; OR
- (B) PROVIDING A GUARANTEE FOR BORROWING BY THE FUND, IN THE NAME OF THE FUND, AND GIVING THE UNDERTAKING REFERRED TO IN SECTION 2(B) OF ARTICLE VII.

SECTION 2. CONDITIONS OF GUARANTEE FINANCING:

- (A) WHERE A MEMBER PROVIDES A GUARANTEE UNDER SECTION 1(B) OF THIS ARTICLE:

- (I) THAT MEMBER SHALL GIVE FAVOURABLE CONSIDERATION TO A REQUEST BY THE GOVERNING COMMITTEE TO AUTHORISE BORROWING BY THE FUND IN ITS DOMESTIC FINANCIAL MARKET, INCLUDING BORROWING FROM PUBLIC INSTITUTIONS, OF CURRENCY THAT IS ACTUALLY CONVERTIBLE, UP TO THE AMOUNT OF THAT GUARANTEE, PROVIDED THAT BORROWING ELSEWHERE WOULD BE DIFFICULT OR INAPPROPRIATE.

- (II) IF THE GOVERNING COMMITTEE DECIDES, BY A TWO-THIRDS MAJORITY, THAT THE GUARANTEE OF THAT MEMBER WOULD NOT ENABLE THE FUND TO OBTAIN THE FINANCING REQUIRED, ON SATISFACTORY TERMS, THAT MEMBER SHALL NOT BE CALLED UPON TO PARTICIPATE IN FINANCING UNDER THIS ARTICLE.

- (B) THE FUND SHALL BE LIABLE FOR REPAYMENT OF BORROWING UNDER A GUARANTEE PROVIDED IN ACCORDANCE WITH SECTION 1(B) OF THIS ARTICLE ONLY TO THE EXTENT OF THE GUARANTEE OF THE MEMBER UNDERTAKING SUCH GUARANTEE, AND NEITHER THE

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ASSETS OF THE FUND NOR THE QUOTAS OF OTHER MEMBERS SHALL BE DRAWN UPON FOR THE PURPOSE OF MAKING INTEREST PAYMENTS OR PRINCIPAL REPAYMENTS AS A RESULT OF SUCH BORROWING.

SECTION 3. TERMS OF DIRECT LENDING AND GUARANTEE FINANCING:

(A) THE FUND SHALL REPAY PRINCIPAL ON DIRECT
FINANCING PROVIDED PURSUANT TO THIS ARTICLE

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C O N F I D E N T I A L SECTION 02 OF 02 OECD PARIS 04186

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ON TERMS CORRESPONDING TO THE LOAN FOR WHICH
THE FINANCING WAS MADE AVAILABLE.

(B) FOR FUNDS PROVIDED PURSUANT TO EACH CALL UNDER
THIS ARTICLE THE RATE OF INTEREST (SHALL BE
THE SAME FOR ALL MEMBERS. SUCH INTEREST RATE
SHALL BE AT LEAST AS HIGH AT THE TIME OF THE
CALL AS THAT AT WHICH THE MEMBERS COULD
INVEST THEIR FOREIGN EXCHANGE RESERVES, BUT
NO HIGHER THAN THE INTEREST RATE AT WHICH A
FIRST-CLASS PUBLIC BORROWER CAN BORROW IN
INTERNATIONAL OR NATIONAL FINANCIAL MARKETS
OF MEMBERS.) OR (SHALL BE DECIDED BY THE
GOVERNING COMMITTEE, HAVING DUE REGARD FOR
THE INTEREST RATE WHICH A BORROWER OF GOOD
NAME HAS TO PAY IN BORROWING MONEY FOR A
COMPARABLE TERM IN INTERNATIONAL FINANCIAL
MARKETS.)

(C) REPAYMENTS OF INTEREST AND PRINCIPAL SHALL BE
MADE IN THE CURRENCY PAID BY THE BORROWER

UNLESS ANOTHER MODE OF PAYMENT HAS BEEN PROVIDED FOR.

END TEXT

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